

Introduced by Senator Kehoe

February 18, 2005

An act to amend Section 6389 of the Family Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 585, as introduced, Kehoe. Protective orders: firearms.

Existing law provides that the form for a protective order notify the respondent that he or she shall be ordered to relinquish possession and control of any firearms. Existing law also provides that the court shall order that relinquishment, as specified, within 24 hours of being served the order, and require the respondent to notify the court of the relinquishment within 72 hours.

This bill would revise the protective order form to notify the respondent that he or she shall be ordered to relinquish possession and control of any firearms immediately, rather than within 24 hours, and to include a place for the requestor to specify the types of firearms that are present and their possible location. The bill would also require the respondent to notify the court of the relinquishment within 48 rather than 72 hours, and would provide that upon a showing of probable cause, the family court may order a law enforcement officer to serve the protective order and issue a warrant for the search and seizure of any firearm in the possession of the respondent.

By requiring new duties of law enforcement, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6389 of the Family Code is amended to
2 read:

3 6389. (a) A person subject to a protective order, as defined in
4 Section 6218, shall not own, possess, purchase, or receive a
5 firearm while that protective order is in effect. Every person who
6 owns, possesses, purchases or receives, or attempts to purchase
7 or receive a firearm while the protective order is in effect is
8 punishable pursuant to subdivision (g) of Section 12021 of the
9 Penal Code.

10 (b) (1) On all forms providing notice that a protective order
11 has been requested or granted, the Judicial Council, shall include
12 a notice that, upon service of the order, the respondent shall be
13 ordered to relinquish possession or control of any firearms
14 *immediately* and not to purchase or receive or attempt to
15 purchase or receive any firearms for a period not to exceed the
16 duration of the restraining order.

17 (2) *Each form shall include a place for the requestor to specify*
18 *the types of firearms that are present and their possible location.*

19 (c) Upon issuance of a protective order, as defined in Section
20 6218, the court shall order the respondent to relinquish
21 *immediately* any firearm in that person's immediate possession or
22 control, or subject to that person's immediate possession or
23 control, ~~within 24 hours of being served with the order,~~ by either
24 surrendering the firearm to the control of local law enforcement
25 officials, or by selling the firearm to a licensed gun dealer, as
26 specified in Section 12071 of the Penal Code. *Upon a showing of*
27 *probable cause, the family court may order a law enforcement*
28 *officer to serve the protective order and issue a warrant for the*
29 *search and seizure of any firearm in the possession of the*
30 *respondent.* A person ordered to relinquish any firearm pursuant
31 to this subdivision shall file with the court a receipt showing the

1 firearm was surrendered to the local law enforcement agency or
2 sold to a licensed gun dealer within ~~72~~ 48 hours after receiving
3 the order.

4 (d) If the respondent declines to relinquish possession of any
5 firearm based upon the assertion of the right against
6 self-incrimination, as provided by the Fifth Amendment to the
7 United States Constitution and Section 15 of Article I of the
8 California Constitution, the court may grant use immunity for the
9 act of relinquishing the firearm required under this section.

10 (e) A local law enforcement agency may charge the
11 respondent a fee for the storage of any firearm pursuant to this
12 section. This fee shall not exceed the actual cost incurred by the
13 local law enforcement agency for the storage of the firearm. For
14 purposes of this subdivision, “actual cost” means expenses
15 directly related to taking possession of a firearm, storing the
16 firearm, and surrendering possession of the firearm to a licensed
17 dealer as defined in Section 12071 of the Penal Code or to the
18 respondent.

19 (f) The restraining order requiring a person to relinquish a
20 firearm pursuant to subdivision (c) shall state on its face that the
21 respondent is prohibited from owning, possessing, purchasing, or
22 receiving a firearm while the protective order is in effect and that
23 the firearm shall be relinquished to the local law enforcement
24 agency for that jurisdiction or sold to a licensed gun dealer, and
25 that proof of surrender or sale shall be filed with the court within
26 a specified period of receipt of the order. The order shall also
27 state on its face the expiration date for relinquishment. Nothing
28 in this section shall limit a respondent’s right under existing law
29 to petition the court at a later date for modification of the order.

30 (g) The restraining order requiring a person to relinquish a
31 firearm pursuant to subdivision (c) shall prohibit the person from
32 possessing or controlling any firearm for the duration of the
33 order. At the expiration of the order, the local law enforcement
34 agency shall return possession of any surrendered firearm to the
35 respondent, within five days after the expiration of the
36 relinquishment order, unless the local law enforcement agency
37 determines that (1) the firearm has been stolen, (2) the
38 respondent is prohibited from possessing a firearm because the
39 respondent is in any prohibited class for the possession of
40 firearms, as defined in Sections 12021 and 12021.1 of the Penal

1 Code and Sections 8100 and 8103 of the Welfare and Institutions
2 Code, or (3) another successive restraining order is used against
3 the respondent under this section. If the local law enforcement
4 agency determines that the respondent is the legal owner of any
5 firearm deposited with the local law enforcement agency and is
6 prohibited from possessing any firearm, the respondent shall be
7 entitled to sell or transfer the firearm to a licensed dealer as
8 defined in Section 12071 of the Penal Code. If the firearm has
9 been stolen, the firearm shall be restored to the lawful owner
10 upon his or her identification of the firearm and proof of
11 ownership.

12 (h) The court may, as part of the relinquishment order, grant
13 an exemption from the relinquishment requirements of this
14 section for a particular firearm if the respondent can show that a
15 particular firearm is necessary as a condition of continued
16 employment and that the current employer is unable to reassign
17 the respondent to another position where a firearm is
18 unnecessary. If an exemption is granted pursuant to this
19 subdivision, the order shall provide that the firearm shall be in
20 the physical possession of the respondent only during scheduled
21 work hours and during travel to and from his or her place of
22 employment. In any case involving a peace officer who as a
23 condition of employment and whose personal safety depends on
24 the ability to carry a firearm, a court may allow the peace officer
25 to continue to carry a firearm, either on duty or off duty, if the
26 court finds by a preponderance of the evidence that the officer
27 does not pose a threat of harm. Prior to making this finding, the
28 court shall require a mandatory psychological evaluation of the
29 peace officer and may require the peace officer to enter into
30 counseling or other remedial treatment program to deal with any
31 propensity for domestic violence.

32 (i) During the period of the relinquishment order, a respondent
33 is entitled to make one sale of all firearms that are in the
34 possession of a local law enforcement agency pursuant to this
35 section. A licensed gun dealer, who presents a local law
36 enforcement agency with a bill of sale indicating that all firearms
37 owned by the respondent that are in the possession of the local
38 law enforcement agency have been sold by the respondent to the
39 licensed gun dealer, shall be given possession of those firearms,
40 at the location where a respondent's firearms are stored, within

1 five days of presenting the local law enforcement agency with a
2 bill of sale.

3 (j) The disposition of any unclaimed property under this
4 section shall be made pursuant to Section 1413 of the Penal
5 Code.

6 (k) The return of a firearm to any person pursuant to
7 subdivision (g) shall not be subject to the requirements of
8 subdivision (d) of Section 12072 of the Penal Code.

9 (l) If the respondent notifies the court that he or she owns a
10 firearm that is not in his or her immediate possession, the court
11 may limit the order to exclude that firearm if the judge is
12 satisfied the respondent is unable to gain access to that firearm
13 while the protective order is in effect.

14 (m) Any respondent to a protective order who violates any
15 order issued pursuant to this section shall be punished under the
16 provisions of subdivision (g) of Section 12021 of the Penal Code.

17 SEC. 2. If the Commission on State Mandates determines that
18 this act contains costs mandated by the state, reimbursement to
19 local agencies and school districts for those costs shall be made
20 pursuant to Part 7 (commencing with Section 17500) of Division
21 4 of Title 2 of the Government Code.